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SEP 16 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Application of:

MM DOCKET NO. 93-107

Westerville, Ohio

DATE OF HEARING: August 31, 1993

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications of:

DAVID A. RINGER

ASF BROADCASTING CORPORATION

WILBURN INDUSTRIES, INC.

SHELLEE F. DAVIS

OHIO RADIO ASSOCIATES

Westerville, Ohio

MM DOCKET NO. 93-107

The above-entitled matter came on for hearing pursuant to Notice before Judge Walter C. Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Tuesday, August 31, 1993, at 8:30 a.m.

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FREE STATE REPORTING, INC.
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I N D E X				
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11	Exhibit No. 5	398	400	
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24	Hearing began: 8:30 a.m.		Hearing Ended: 4:45 p.m.	
25	Lunch Began: 11:47 a.m.		Lunch Ended: 12:54 p.m.	

P R O C E E D I N G S

1
2 JUDGE MILLER: On the record. This is the date that
3 we begin the hearing in the Westerville, Ohio, FM proceeding,
4 MM Docket 93-107. We're here today to conduct the cross
5 examination on the witnesses that we notified on August 20th,
6 1993. Before we begin, let's take some appearances. For
7 David A. Ringer?

8 MR. BELENDIUK: Good morning, Your Honor. Arthur
9 Belendiuk for Smithwick and Belendiuk.

10 JUDGE MILLER: For ASF Broadcasting?

11 MR. KOERNER: James A. Koerner of Baraff, Koerner,
12 Olender and Hochberg.

13 JUDGE MILLER: For Wilburn Industries, Inc.?

14 MR. KRAVETZ: Eric S. Kravetz; Brown, Nietert and
15 Kaufman.

16 JUDGE MILLER: For Shellee Davis?

17 MR. ALPERT: Dan J. Alpert, Your Honor. Good
18 morning.

19 JUDGE MILLER: For Ohio Radio Associates?

20 MR. YELVERTON: Your Honor, it's Stephen Yelverton
21 of the law firm of McNair and Sanford. I'd also like to note
22 for the record that Joseph Carney, who's a principal of Ohio
23 Radio Associates, is present here. And he's anxious to
24 testify, but nobody called him for cross examination, but he's
25 here anyway.

1 JUDGE MILLER: Well, I hope he enjoys his vacation,
2 Mr. Yelverton. Before we get started, I'll give a little
3 progress report. As is -- As you all know, there's pending
4 the usual petitions to enlarge issues, in this case six of
5 them. So the possibility exists that there'll be a phase 2
6 hearing. But that has nothing to do with what we're here to
7 do today. We're here to complete phase 1. And would -- Well,
8 one more item. I've granted Mr. Koerner's motions for
9 extension of time.

10 MR. KOERNER: Thank you, Your Honor.

11 JUDGE MILLER: If you -- They'll be out I guess
12 tomorrow. FCC 93M556 and 557. With that progress report, are
13 there any preliminary matters you wish to bring up, Mr.
14 Belendiuk?

15 MR. BELENDIUK: No, Your Honor.

16 JUDGE MILLER: Mr. Koerner?

17 MR. KOERNER: No, Your Honor.

18 JUDGE MILLER: Mr. Kravetz?

19 MR. KRAVETZ: No, Your Honor.

20 JUDGE MILLER: Mr. Alpert?

21 MR. ALPERT: No, Your Honor.

22 JUDGE MILLER: Mr. Yelverton?

23 MR. YELVERTON: No, Your Honor.

24 JUDGE MILLER: Let's move forward then. We're going
25 to hear from the applicants in docket order. That means that

1 we're going to open with David Ringer, followed by ASF, then
2 Wilburn Industries, and then Shellee Davis. And as Mr.
3 Yelverton has pointed out, the Ohio Radio Associates has, has
4 nothing more to do. We have six witnesses scheduled for this
5 phase, David Ringer, Ardeth S. Frizzell, Thomas J. Beauvais,
6 Charles W. Wilburn, Bernard P. Wilburn, and Shellee Davis.

7 I'm going to try to experiment a little bit here,
8 see if we can't get a little more organization in our cross
9 examination. It'll be very helpful if as you are cross
10 examining you are able to point to a direct case reference
11 that you are cross examining. In that way, I'll know that
12 you're staying within the scope of cross examination. With
13 that information, are you ready to proceed, Mr. Belendiuk?

14 MR. BELENDIUK: Yes, I am, Your Honor.

15 JUDGE MILLER: Call your witness. You're calling --
16 Mr. Belendiuk, you're calling?

17 MR. BELENDIUK: Oh, David Ringer.

18 JUDGE MILLER: Okay. Mr. Ringer, raise your right
19 hand.

20 Whereupon,

21 DAVID A. RINGER
22 having first been duly sworn, was called as a witness herein
23 and was examined and testified as follows:

24 MR. BELENDIUK: Your Honor, consistent with your
25 prehearing conference forms, I have a couple of questions for

1 Mr. Ringer, or you can ask them. I don't know how you want to
2 do it.

3 JUDGE MILLER: Whatever turns you on.

4 MR. BELENDIUK: Okay. Well, then I'll do it.

5 DIRECT EXAMINATION

6 BY MR. BELENDIUK:

7 Q Mr. Ringer, could you please state your date of
8 birth?

9 A March 20th, 1941.

10 Q Okay. Would you turn to Exhibit 4, which is titled
11 "Diversification"? Could you tell this Court what, what your
12 equity interest is in WYBZ?

13 A I'm 25 percent owner.

14 Q Okay. And when was that acquired?

15 A February of 1991.

16 Q Okay. That's all the questions I have, Your Honor.

17 JUDGE MILLER: All right, let me just ask one quick
18 one here. What's, what's the mileage distance between
19 Columbus and Crooksville?

20 WITNESS: About 45 miles.

21 JUDGE MILLER: All right, Mr. Koerner, are you
22 carrying the laboring oar?

23 MR. KOERNER: I think Mr. Yelverton is.

24 JUDGE MILLER: All right, Mr. Yelverton's carrying
25 the laboring oar -- Proceed, Mr. Yelverton.

1 MR. YELVERTON: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. YELVERTON:

4 Q Good morning, Mr. Ringer.

5 A Good morning, sir.

6 Q Would you state for the record your current address?

7 A 417 West 6th Avenue in Columbus, Ohio.

8 Q Is this address within the one millivolt contour of
9 your proposed Westerville station?

10 A I believe it is.

11 JUDGE MILLER: On what do you base that belief?
12 Have you ever seen, have you ever seen the engineering map?

13 WITNESS: Yes, sir. Yes, I have, and I looked --
14 During my deposition, I saw that map and at that time I was
15 able to judge for sure that it was within the one millivolt.

16 BY MR. YELVERTON:

17 Q Fine. Mr. Ringer, what methodology did you utilize
18 to determine that your current residence is within the one
19 millivolt?

20 MR. BELENDIUK: Your Honor, I'm going to object. He
21 just answered what he did. I don't know how that's going to
22 help.

23 MR. YELVERTON: Well, Your Honor, let me rephrase
24 the question.

25 MR. BELENDIUK: It's the same question to me.

1 BY MR. YELVERTON:

2 Q Did you --

3 JUDGE MILLER: He said he was at his deposition and
4 he was shown a map and he looked at the map and he said he was
5 able to determine that that -- that 417 West 6th Avenue,
6 Columbus, was inside the --

7 WITNESS: One millivolt.

8 JUDGE MILLER: -- one millivolt permitted contour.
9 Now, what more do you need?

10 BY MR. YELVERTON:

11 Q Okay. Did you in any way utilize the services of an
12 engineer in determining?

13 A Except for looking -- Except for what they
14 determined the map? They, they drew the map and then that was
15 it. I mean, you can tell the line and then my address is
16 within the line.

17 Q Okay, since the deposition, have you verified in any
18 way that this residence is within the one millivolt?

19 A No, sir.

20 Q And you testified earlier, you said you believe it's
21 within the one millivolt. And does that indicate any
22 uncertainty on your part?

23 A Well, no. I mean, if the line is correct and the
24 engineers are correct, then I am within the one millivolt.

25 Q And you have a past residence at 1000 Urlin Avenue.

1 A Yes, sir.

2 Q In Columbus. Is that residence within the one
3 millivolt contour?

4 A Yes, it is. Yes.

5 Q And how did you determine that this residence is
6 within the proposed contour?

7 A The same as my current address, by the map, the
8 line. I'm within that line.

9 Q All right. Now, since you made that determination,
10 have you in any way verified --

11 A No, sir.

12 Q -- that?

13 A No. Except the --

14 Q Also, you have a past resident at East Town Street
15 in Columbus, T-O-W-N. Is that within the proposed one
16 millivolt contour?

17 A Yes, it is, sir.

18 Q And how did you determine this to be the case?

19 A The map as well. The one line -- The line for East
20 Town Street goes way below the Town Street address.

21 Q And since you made the initial determination, have
22 you verified this in, in any way?

23 A No, sir.

24 Q On July 16th of 1993, you filed an amendment to your
25 pending application, correcting certain errors in your

1 integration statement as to other past residences within the
2 proposed service area. Is that correct?

3 A That is correct.

4 Q And it's accurate to state that you had previously
5 claimed certain residences to be within the one millivolt and,
6 and then notified the presiding judge and the other parties
7 this was in error?

8 A That is correct, sir.

9 Q How did these errors come about?

10 MR. BELENDIUK: Objection, Your Honor. Relevance.
11 We filed an amendment. No one opposed the amendment. It's in
12 here. I don't know where we're going with this.

13 JUDGE MILLER: Sustained.

14 BY MR. YELVERTON:

15 Q You stated in your integration proposal, which is
16 Exhibit 2, first paragraph, that you plan to relocate to
17 Westerville from your current residence in Columbus?

18 A Yes, sir.

19 Q Is that correct? Have you made any plans to sell or
20 rent your current home?

21 A To -- I just -- Well, of course, the 1000 Urlin
22 Avenue has been sold. 417 West 6th Avenue I will sell if, if
23 I get this license and move to the Westerville area.

24 Q Have you made any plans to sell that residence?

25 A No. Not until I understand the outcome of this

1 hearing.

2 Q Is it not a fact that you've never looked at any
3 prospective housing in Westerville?

4 A That is correct.

5 Q And --

6 JUDGE MILLER: When did you buy your home at 417
7 West 6th Avenue?

8 WITNESS: Fourteen months ago.

9 JUDGE MILLER: And before the 417 West 6th, you
10 lived at the 100 Urlin?

11 WITNESS: 1000 Urlin. Yes, sir.

12 JUDGE MILLER: 1000 Urlin?

13 WITNESS: Yes, sir.

14 JUDGE MILLER: And how long did you live at 1000
15 Urlin?

16 WITNESS: I moved there in November of 1986.

17 JUDGE MILLER: From, from a layman's point of view,
18 why did you move from Urlin to West 6th?

19 WITNESS: Urlin was a condominium and I have two
20 dogs.

21 JUDGE MILLER: Okay. And the 417 is a single-family
22 residence?

23 WITNESS: Yes. Yes, sir.

24 JUDGE MILLER: Proceed, Mr. Yelverton.

25 MR. YELVERTON: Thank you, Your Honor.

1 BY MR. YELVERTON:

2 Q Mr. Ringer, is it not a fact that you've never
3 personally visited the facilities for station WBBY which you
4 intend to lease?

5 A That's true.

6 Q And just to make clear for the record, you propose
7 to utilize these existing facilities at station WBBY?

8 A Yes, sir.

9 Q I'd like to turn your attention to --

10 JUDGE MILLER: Let me ask a couple questions here.
11 Before you acquired your interest in WYBZ-FM Crooksville,
12 Ohio, what was your occupation?

13 WITNESS: I was in the publishing business,
14 advertising business, and the land business. In other words,
15 I, I did -- I had several businesses. One was advertising,
16 one was publishing, and one was buying and selling properties.

17 JUDGE MILLER: Now, do you still have those
18 businesses?

19 WITNESS: No, sir. Just the, the land business
20 where I buy and sell properties and develop land.

21 JUDGE MILLER: All right, proceed, Mr. Yelverton.

22 MR. YELVERTON: Thank you, Your Honor.

23 BY MR. YELVERTON:

24 Q Mr. Ringer, I'd like to turn your attention to your
25 hearing Exhibit 2, page 1, at the bottom. It lists civic

1 activities, the Salvation Army. At the bottom of the page.

2 A Oh, okay. Yes.

3 Q Is it not a fact that some of the volunteer work
4 that you did for the Salvation Army were activities outside
5 the one millivolt contour of your proposed station?

6 A I'm sure that was, because at the time you have --
7 you don't know where you are when you're doing these things.

8 Q And I'd like to turn your attention to the top of
9 the next page, Exhibit 2, which makes some reference to
10 volunteer for Toys for Tots. And, and it is -- is it not a
11 fact that some of these activities were outside the one, one
12 millivolt contour of the proposed station?

13 A Unless they were done in my home. Now, if they were
14 done in my home, it would be within the one millivolt. If
15 they were done outside my home, then obviously it would not be
16 possible.

17 Q Well, isn't it a fact that some of these activities
18 were outside the one millivolt contour?

19 A Some probably were, yes, sir.

20 Q And it's also a fact you're not certain how many of
21 the activities?

22 A No. I mean, there's no way of knowing at the time.

23 Q And -- Excuse me, go ahead.

24 A No, I mean, at the time there would be no way of --
25 Thinking back, I can't remember exactly if it was inside or

1 outside. If these things were done within my home, then they
2 would have been within the one millivolt.

3 Q But you don't know what percentage of the activities
4 were done within your home and, and outside your home?

5 A That is correct, sir.

6 Q Going to turn your attention to Exhibit 3, page 1,
7 "Auxiliary Power." Is it not a fact that in your cost
8 estimates you did not include any specific itemization for
9 auxiliary power?

10 A That is correct, at the time.

11 Q I'd like to turn your attention to --

12 JUDGE MILLER: Does WYBZ-FM in Crooksville, Ohio,
13 have auxiliary power?

14 WITNESS: No, sir.

15 JUDGE MILLER: Proceed, Mr. Yelverton.

16 MR. YELVERTON: Thank you, Your Honor.

17 BY MR. YELVERTON:

18 Q Mr. Ringer, I'd like to turn your attention to
19 Exhibit 4, page 1, "Solicitations." You previously testified
20 that you are a 25 percent owner of station WYBZ.

21 A Yes, sir.

22 Q Who are the other owners?

23 A Rick Sabine, David Winner, spelled W-I-N-N-E-R, and
24 Edgar Davis. We each own 25 percent.

25 Q And it's a fact that this is what's would be

1 considered a closely held corporation, no publicly traded
2 stock?

3 A That is correct.

4 Q And you indicate in your diversification statement
5 that you will sell your interest, your 25 percent interest, in
6 WYBZ. Is that correct?

7 A That is correct.

8 Q And --

9 A I'm in the process of doing that now.

10 Q Okay, who do you intend to sell this stock to?

11 A The, the remaining partners have indicated they
12 would buy it, and the latest is that one of the remaining
13 partners is going to buy my share, that being David Winner.

14 Q Now, when did you first approach the other owners
15 about buying your stock?

16 A In October, October last year.

17 Q And that would be October 1992?

18 A Yes, sir.

19 Q And you filed your application for Westerville in
20 December 1991?

21 A That's right.

22 Q And in your application as initially filed in
23 December 1991, you proposed to divest --

24 A That's right.

25 Q -- your interest in WYBZ?

1 A That's right.

2 Q When did you first discuss a, a purchase price with
3 your other partners in the acquisition of your stock?

4 A In October of last year.

5 Q Again, that's October 1992?

6 A Yes, sir, right.

7 Q Have you come to a definitive purchase price at this
8 time?

9 A Yes, I have.

10 Q Okay. Is, is this based on a fair market value
11 appraisal or cost basis?

12 A Cost.

13 MR. BELENDIUK: Your Honor --

14 WITNESS: Well --

15 MR. BELENDIUK: -- I, I think we're going a little
16 far with this.

17 JUDGE MILLER: Sustained, if that's an objection.

18 MR. BELENDIUK: Yes, it was.

19 JUDGE MILLER: Well, I didn't hear you say I object.
20 All I heard you do is talk. But if you objected, it's
21 sustained.

22 BY MR. YELVERTON:

23 Q You've indicated that Mr. Winner, one of the
24 partners, has indicated an interest in buying your stock. Has
25 he shown you any, any documentation as to his ability to

1 purchase this stock?

2 MR. BELENDIUK: Objection, Your Honor.

3 JUDGE MILLER: Sustained.

4 BY MR. YELVERTON:

5 Q Is this purchase going to be a cash purchase or are
6 you going to give terms?

7 A Cash.

8 MR. BELENDIUK: Objection, Your Honor.

9 JUDGE MILLER: Overruled.

10 WITNESS: Cash.

11 BY MR. YELVERTON:

12 Q Have the terms --

13 JUDGE MILLER: You're being done a favor,

14 Mr. Belendiuk..

15 MR. BELENDIUK: I understand that, Your Honor.

16 BY MR. YELVERTON:

17 Q Have the terms of this purchase been put in writing?

18 A I'm not real sure because my attorneys are handling
19 it, and my attorney and their attorney are negotiating this.
20 And there's a message on my machine at home right now from my
21 attorney on the latest procedures. So there is, but I haven't
22 seen it. Now, I've discussed it with my attorney and I --
23 we're on agreement, so apparently there is something.

24 Q Is it not a fact that you're liable on a loan or
25 loans with respect to station WYBZ in the amount of some

1 \$400,000?

2 A Yes.

3 Q Have your partners agreed to release you from this
4 liability when your stock is sold?

5 A They have.

6 Q And, and when, when did this agreement come into
7 being?

8 A During the, the --

9 MR. BELENDIUK: Your Honor, I'm sorry. I'm going to
10 object. I think it assumes facts not in evidence, which is
11 that there is an agreement.

12 MR. YELVERTON: I think he just testified that
13 there's such an agreement, or an understanding.

14 MR. BELENDIUK: An understanding. I just don't want
15 -- I don't want to get in trouble with --

16 JUDGE MILLER: Remember what I told you guys.
17 Remember what I told you?

18 MR. BELENDIUK: Yes. I apologize, Your Honor.

19 JUDGE MILLER: Address the bench and not each other.

20 MR. BELENDIUK: Your Honor, as long as it's an
21 understanding, I don't --

22 JUDGE MILLER: Look -- Do you feel comfortable
23 answering the question?

24 WITNESS: Yes, sir. Yes, it's, it's all right.

25 JUDGE MILLER: Proceed.

1 WITNESS: Yes, they have agreed to, to -- Well, I,
2 I'm not going to indemnify the debt. I mean, I'm going to be
3 released, be released from the obligations, to, to the banks.
4 I will owe no monies after this is complete.

5 BY MR. YELVERTON:

6 Q And when was this understanding reached?

7 A The original understanding was part of the
8 discussion back in October and it is -- the final discussions
9 are, are underway now.

10 Q Is it not a fact that you are currently a party to a
11 four-year, noncompete agreement with a company by the name of
12 AD, Incorporated, A-D?

13 A Yes, sir.

14 Q Is this a company you previously worked for?

15 A No.

16 Q Is it not a fact that AD, Incorporated, is involved
17 in advertising in newspapers and free shopper guides?

18 A That is correct.

19 Q And is it a fact that this noncompete agreement
20 encompasses the entire State of Ohio?

21 A That is correct.

22 Q And this noncompete agreement requires that you not
23 compete with AD, Incorporated, as to advertising in the State
24 of Ohio?

25 A No, sir, only print advertising.

1 Q And does this agreement specifically refer only to
2 print advertising?

3 A Yes, it does.

4 Q At the deposition, did you not testify at that time
5 you were not certain as to the terms of the noncompete
6 agreement?

7 A I don't remember. It doesn't seem like the
8 testimony, but I don't remember how I testified.

9 Q Well, if I --

10 A If you wouldn't mind reading it to me.

11 Q I'll refer you to your deposition.

12 JUDGE MILLER: Do you have a copy of the deposition?

13 MR. YELVERTON: Yes, Your Honor, I do.

14 JUDGE MILLER: Not you, the witness.

15 WITNESS: No, sir.

16 MR. YELVERTON: He does not, but I can place it in
17 front of him.

18 JUDGE MILLER: Will you place a copy of the
19 deposition in front of him, please? Now, is this a copy of
20 the deposition that you and Mr. Yelverton have been talking
21 about?

22 WITNESS: Yes.

23 JUDGE MILLER: And when was that deposition taken?

24 WITNESS: July the 16th, 1993.

25 JUDGE MILLER: Have you had a chance to read that

1 deposition?

2 WITNESS: Yes, sir. Yes, I have.

3 JUDGE MILLER: Have you signed it?

4 WITNESS: Yes.

5 JUDGE MILLER: And you -- So you got a chance to
6 make any corrections that you felt were, were needed in the
7 deposition, right?

8 WITNESS: Yes, sir. Yes.

9 JUDGE MILLER: Proceed, Mr. Yelverton.

10 BY MR. YELVERTON:

11 Q Mr. Ringer, I'd like to turn your attention to page
12 44 of the deposition.

13 A Okay.

14 Q Okay, line 10, were you asked the question "Does the
15 agreement define what a newspaper is?"

16 A Line 10? I have Mr. -- On page 40 --

17 Q Forty-four.

18 JUDGE MILLER: Forty-four.

19 WITNESS: Forty-four. I'm sorry. Okay. And I said
20 it does not.

21 BY MR. YELVERTON:

22 Q Let's, let's just make sure we have this in the
23 record. You were asked a question, "Does the agreement define
24 what a newspaper is?" Is that correct?

25 A That's, that's -- that is correct.

1 Q And on line 11 your answer was, "No, it does not."

2 A Right. That is correct.

3 Q And I would like to turn your attention to page 45,
4 line 21 and 22. Were you asked a question, "Does the
5 agreement define what constitutes competition?"

6 A What line?

7 Q This is --

8 A Oh, "Does the agreement define what is -- "

9 Q -- 21 and 22 at the bottom of page 45.

10 A And I answered, "No, I, I don't think it does but I
11 haven't seen the agreement for some time." And that was --
12 that's true, I hadn't seen the agreement for some time, so I
13 can't recall. But I think it does.

14 Q Okay. Since the time of the deposition, have you
15 read the noncompete agreement?

16 A I have.

17 Q And it's, it's a fact that you've declined to
18 produce a copy of this noncompete agreement to the other
19 parties?

20 MR. BELENDIUK: Objection, Your Honor. He was never
21 asked for one.

22 JUDGE MILLER: I'll, I'll sustain the objection.
23 You can approach the topic again, but lay a foundation.

24 MR. YELVERTON: Excuse me, Your Honor?

25 JUDGE MILLER: Lay a foundation.